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CHANGES TO CHAPTER 189-2: PRACTICE AND PROCEDURE

Synopsis of proposed changes to Commission Rule 189-2

Purpose

Currently the State Ethics Commission conducts hearings held under the Georgia Administrative Procedures Act ("A.P.A"). In the future the State Ethics Commission will designate a Hearing Officer to conduct A.P.A. hearings pursuant to the Georgia Ethics in Government Act, O.C.G.A. § 21-5-6(b)(10)(A) .

Notice

The State Ethics Commission shall consider the adoption of the amended provisions to Rule 189-2 at the State Ethics Commission telephone conference call meeting, to be held at **10:00 a.m.** on the **September 28, 2006**, in **Assembly Room 1 of the Capitol Education Center**. All interested persons may present any data, views, or arguments, orally or in writing, regarding the proposed amendment.

Main Features of Amended Provisions to Rule 189-2

189-2-.01(d) is amended to define the term "Contested Case" to mean "a hearing held in accordance with Chapter 13 of Title 50, the Georgia Administrative Procedure Act".

189-2-.03(e) is amended by inserting the term "Commission Rule". The amended version of 189-2-.03(e) reads as follows: "A general reference to the statutory provision(s) of the Ethics in Government Act, Vendor Gift Disclosure Law, Commission Rule, or any other statute within the jurisdiction of the Commission."

189-2-.06(1) is amended by the insertion of the phrase "or its duly appointed officer" in order to allow the Commission to designate a Hearing Officer empowered to proceed on the Commission's behalf during hearings held in accordance with Chapter 13 of Title 50.

Main Features of Proposed Provisions to Rule 189-2

189-2-.06(2) consists of the proposed provisions and describes the procedure for contested cases and any appeals of such cases. In addition, the proposed provisions establish an appeals process and timeline for any ruling rendered by the Commission's designated Hearing Officer.

AMENDED RULE OF STATE ETHICS COMMISSION

GA COMP. R. & REGS. 189-2-.01

GEORGIA ADMINISTRATIVE CODE

TITLE 189. RULES OF STATE ETHICS COMMISSION

CHAPTER 189-2. PRACTICE AND PROCEDURE

189-2-.01. Definitions

The following words and terms as used in these rules shall have the meaning hereinafter ascribed to them:

- (a) "Commission" - the State Ethics Commission of the State of Georgia.
- (b) "Complainant" - a person who files a written complaint alleging a violation of one or more laws under the jurisdiction of the State Ethics Commission.
- (c) "Consent Order" - a written document wherein the State Ethics Commission and the Respondent agree and consent to terms which may include admissions of violations by the Respondent; findings of fact; conclusions of law; imposition of civil penalties, late filing fees, and/or administrative fees; remedial actions to be taken; oral or written statements to be made or issued; prohibition of actual or threatened violations; cease and desist language; and the ordering of actions necessary to correct cited deficiencies.

Consent orders must be signed by the Respondent and received by the Commission staff not later than two (2) days prior to the date the case is scheduled to be heard before the

Commission, unless the Executive Secretary has approved an extension of time.

(d) "Contested Case" - a hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(e) "End Recipient" - the party paid for providing goods or services to benefit a candidate, officeholder, or campaign committee regardless of whether such payment is arranged, passed through, or paid by a third party or agent for the candidate, officeholder, or campaign committee.

(f) "Hearing" - a proceeding before the Commission or its duly appointed hearing officer for either the consideration of a modification or a change in existing rules, or for an adjudication of issues presented in a contested case, at which all parties at interest are afforded an opportunity to present testimony, documentary evidence and arguments, as to the matter under consideration.

(g) "Hearing Officer" - an individual appointed by the Commission for the purpose of presiding over a hearing as herein defined.

(h) "Non-Candidate Campaign Committee" - any individual, business, partnership, committee, association, corporation, labor organization, political action committee, political party, or any other organization, group, or person, whether located within or outside the State of Georgia, who accepts contributions for, makes contributions to, or makes expenditures (1) on behalf of candidates seeking to be elected to municipal, county, or state office in Georgia; (2) seeking or opposing the recall of a public officer holding such elective office in Georgia; and/or (3) designed to bring about voter approval or rejection of a proposed constitutional amendment, a statewide referendum, or a proposed ballot question in any county or municipal election.

(i) "Notice of Hearing" - a written statement of the substance of a specific charge alleging violation of the statute, rule, or regulation to be considered at a hearing to the person or party affected thereby, or of the substance of a proposed rule to be considered, which will afford actual notice to all interested persons. Notice shall be given in accordance with the Administrative Procedure Act ([O.C.G.A. 50-13-1](#) et seq.).

(j) "Party" or "Party at Interest" - each person or agency named or admitted as a party or properly seeking and entitled as a right to be admitted as a party.

(k) "Person" an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

(l) "Preliminary Hearing" - a proceeding before the Commission or its duly appointed hearing officer for the purpose of deciding if there are reasonable grounds to believe that the Ethics in Government Act or other statute under the jurisdiction of the Commission has been violated, or if there are reasonable grounds to believe there has been a failure to comply with any rule or regulation promulgated by the Commission, and if the matter should be set down for a "Hearing" for the purpose of determining whether a violation of the Ethics in Government Act or other statute within the jurisdiction of the Commission and whether any sanctions should be imposed should a violation be found. This term also specifically includes hearings held pursuant to the issuance of an Administrative Subpoena.

(m) "Respondent" - a person against whom a complaint is filed or who has been added as such by the Commission at a preliminary hearing based on a finding of reasonable grounds to believe that a violation has occurred; or a person who has been named a Respondent by the Commission by virtue of a finding of probable cause to open an

investigation.

(n) "Rule" - any regulation, standard, or statement of general or particular applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the State Ethics Commission.

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TITLE 189. RULES OF STATE ETHICS COMMISSION

CHAPTER 189-2. PRACTICE AND PROCEDURE

189-2-.03. Complaints

(1) Form of Complaint. All complaints to be considered by the Commission shall be filed in writing with the Commission and shall contain the following:

- (a) The name and address of the person or persons who file the complaint.
- (b) The sworn verification and signature of the Complainant.
- (c) The name and address of the party or parties against whom the complaint is filed, and if any such party is a candidate, the office being sought.
- (d) A clear and concise statement of the facts upon which the Complaint is based along with an allegation that such facts constitute one or more violations of law under the jurisdiction of the Commission.
- (e) A general reference to the statutory provision(s) of the Ethics in Government Act, Vendor Gift Disclosure Law, Commission Rule, or any other statute within the jurisdiction of the Commission allegedly violated.
- (f) Any further information which might support the allegations in the Complaint including, but not limited to, the following:
 - 1. The name and address of all other persons who have firsthand knowledge of the facts alleged in the Complaint;

2. Any documentary evidence that supports the facts alleged in the Complaint.

(2) Preliminary Action on the Complaint. Upon receipt of a Complaint, the Commission staff shall send a copy of the Complaint to the Respondent affording an opportunity to respond to the Complaint within fourteen (14) days in writing if desired. Responses or other documents submitted by the Complainant or the Respondent to the Commission after the fourteen-day period may be disregarded by the Commission or staff during the preliminary investigation or at the Preliminary Hearing.

(3) Defective Complaint. Upon receipt of a written Complaint which does not conform to the requirements of paragraph (1) of this Rule, the Executive Secretary of the Commission shall by letter acknowledge receipt of the Complaint and advise the Complainant of the defect in the Complaint and that the Complaint will not be considered by the Commission unless the defect is corrected.

(4) Preliminary Investigation of Complaint. The Commission staff shall conduct a preliminary investigation of any non-defective complaint and recommend as a part of its on-going investigation what further action, if any, should be taken. If the Commission staff should determine that there is no basis for proceeding on a complaint under the Ethics in Government Act or any other statute within the jurisdiction of the Commission, then the staff shall so notify the Complainant and administratively dismiss the complaint without requiring any formal action by the Commission.

(5) Preliminary Hearing. Following the preliminary investigation the Complaint shall be scheduled for a Preliminary Hearing before the Commission (or Hearing Officer if applicable) and the Complainant and Respondent shall be notified of the scheduled hearing date. At such Hearing, the Commission shall determine whether there are

reasonable grounds to believe that a violation has occurred. If the Commission finds no reasonable grounds to believe a violation has occurred, the Complaint shall be dismissed, subject to being reopened upon discovery of additional evidence or relevant material.

(6) Consideration of Complaint. If at the Preliminary Hearing it is determined that further action is warranted, the Commission shall proceed as provided by law in Contested Cases. However, if the entry of an order to cease and desist from any and all violations is deemed a sufficient disposition of the Complaint, or if it is determined that the Complaint should be resolved by other action, the Commission may conclude any case at the Preliminary Hearing stage or later by the entry of such order. Nothing in this rule shall require the Commission to dispose of any matter in a single hearing nor shall this rule prevent the matter from being subject to further investigation by the Commission staff.

GA COMP. R. & REGS. 189-2-.05

GEORGIA ADMINISTRATIVE CODE

TITLE 189. RULES OF STATE ETHICS COMMISSION

CHAPTER 189-2. PRACTICE AND PROCEDURE

189-2-.05. Contested Cases; Notice; Hearing; Record

In any Contested Case, after the Preliminary Hearing has been completed and the matter has been scheduled for an Administrative Procedure Act hearing, the Commission [or its duly appointed officer] shall follow the rules adopted by the Commission and shall comply with the provisions of the Georgia Administrative Procedure Act in the matter and in hearing the Contested Case ([O.C.G.A. 50-13-1](#), et seq.).

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TITLE 189. RULES OF STATE ETHICS COMMISSION

CHAPTER 189-2. PRACTICE AND PROCEDURE

189-2-.06. Disposition of Cases

(1) After completion of appropriate proceedings, the Commission or its duly appointed officer may:

(a) Dismiss the case if no violation is found.

(b) Conclude any case by the entry of an order to cease and desist from any and all violations.

(c) Issue an Order finding one or more violations of law under the jurisdiction of the State Ethics Commission, and imposing civil penalties as provided by law, including but not limited to:

(i) Assessment of civil penalties in a dollar amount not to exceed the maximum authorized per violation times the number of violations found; and

(ii) Order the filing or amending of any delinquent or deficient document or report required to be filed by law under the jurisdiction of the State Ethics Commission and on a form or in the manner required by the Commission, within a certain time period with copies to be filed with the Commission; and

(iii) Ordering such other actions as necessary to bring about compliance with the law, including prohibiting the actual or threatened commission of any conduct constituting a

violation.

(d) Suspend the hearing and report all preliminary findings to any prosecutorial authority for any action deemed appropriate.

(e) Postpone findings and any possible penalty for rescheduling and consideration of the matter at a future meeting, and subject to the taking of any interim action suggested by the Commission as dispositive in lieu of further proceedings.

(2) If a Hearing Officer hears a contested case and issues an Initial Decision:

(a) The Initial Decision will become the Final Decision by operation of law unless the Respondent or Attorney General's office makes a written request for review by the Commission within 30 days of the filing of the Initial Decision. Pursuant to [O.C.G.A. 50-13-17\(a\)](#) nothing in the Rules shall be construed to prevent the Commission, within 30 days of the Initial Decision, from ordering a review of any Initial Decision rendered by the duly appointed Hearing Officer.

(b) If the Respondent or Attorney General's office files a motion for review within 30 days of Initial Decision of the Hearing Officer, the Respondent or Attorney General's office shall include therein a statement of the reasons for seeking review and alleged errors made by the Hearing Officer in the Initial Decision. The Commission's review will be limited to those issues raised by the Respondent or Attorney General's office in the motion for review or by the Commission in its order for review.

(c) Upon the filing of a motion for review within 30 days of the Initial Decision, by the Respondent or Attorney General's office, or upon the filing of a timely order for review by the Commission on its own motion, notice of the date and time for the review shall be served on the Respondent or counsel for the Respondent and Attorney General's office.

(d) On review of the Initial Decision, the Commission shall have all the powers it would have in making the Initial Decision, and in its discretion shall have the power to take additional testimony or remand the case to the original hearing officer for such purpose, as provided in the Administrative Procedure Act [O.C.G.A. 50-13-17](#) and in accordance with this rule. The Respondent or Respondent's counsel and the Attorney General's office shall docket any motion, including motions to present additional evidence, at least fourteen (14) days before the date set for the Review Hearing. Responses to any such motions shall be docketed at least seven (7) days before the date set for the Review Hearing.

(i) Motions to present additional evidence or to remand the case to the original hearing officer for such purpose shall be granted only if the additional evidence is material and there was good cause for failing to present such evidence before the original hearing officer. The Commission shall enter an order as to the legal sufficiency of all motions, including motions for the presentation of additional evidence, prior to the Review Hearing.

(ii) Unless the Commission has granted a motion to present additional evidence, the Commission shall not receive any additional evidence by testimony or through documents at the Review Hearing. When represented by counsel at the Review Hearing, only counsel for the Respondent is permitted to make oral argument on behalf of the Respondent. When represented by counsel, unless the Commission has granted a motion to allow the additional testimony of the Respondent at the Review Hearing, the Respondent may not make a statement to the Commission, and any questions of the Respondent by the Commission shall be directed to the Respondent's counsel. During

oral argument, questions by the Commission and the responses thereto shall not exceed the scope of the record under review unless the Commission has granted a motion to present additional evidence.

(e) Oral argument up to twenty (20) minutes per side is permitted in the Review Hearing. Additional time for argument must be requested in writing and docketed at least fourteen (14) days before the date set for the Review Hearing.

(f) Once the Review Hearing is concluded, the Commission shall deliberate as to the Final Decision in open session. At the conclusion of the deliberations, the vote of the matter shall be conducted in open session.